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continuance the lease had terminated and been renewed at a reduced rental because of the nuisance.

PARTNERSHIP—TRADE-MARKS AND TRADE NAMES—RIGHTS OF RETIRING PARTNER.—WHITE V. TROWBRIDGE, 64 ATL. 862 (PA.).—A retiring partner disposed of all his rights and property in the firm, but entered into no contract restricting him from prosecuting a similar competing business. *Held,* that he is not deprived of the right to use his own name in connection with such competing business, from the fact that his surname is a portion of the trade-mark used by the firm of which he was formerly a member.

A person has the right to the honest use of his own name, even to the infringement of a trade-mark. *Derringer v. Plate,* 29 Cal. 293; *Schier v. Johnson,* 111 Mass. 238. However, an assignment by a retiring partner of all his stock, property and effects carries the right to use his personal name when it has become a trade name. *Hoxie v. Chaney,* 143 Mass. 592. And it follows that the firm is entitled to protection in the use of such name. *Myers v. Buggy Co.,* 54 Mich. 215. In some cases this doctrine has been extended and *Le Page v. Russia Cement Co.,* 51 Fed. 941, holds that, when an individual's name has become a trade name belonging to another person, the right to use his name in connection with an article, even to state that it is manufactured by him, must be denied to a person who has previously disposed of his interest in the business. The better rule, however, would seem to be that, when a person has in any way acquired a right to a trade name, another person is only precluded from using his own name in such a way as to confuse his business with that of the original firm. *Walter Baker & Co. v. Baker,* 87 Fed. 209; *Gage v. Pub. Co.,* 10 Ont. App. 402.

RAILROADS—NEGLIGENT OPERATION—NUISANCE.—COLGATE V. N. Y. CENT. RY. CO., 100 N. Y. SUPP. 650.—*Held,* where a railroad company so negligently operated its road as to permit unnecessary whistling and bell ringing in the residential section of a town, such acts constituted a private nuisance to an abutting land owner.

An action will not lie for mere consequential injuries caused by the proper and careful operation of a railroad. *Beseman v. Penn. Ry. Co.,* 50 N. J. Law 235; *Struthers v. Dunkirk W. & P. Ry. Co.,* 87 Pa. 282. But whistling and bell ringing as allowed by the legislature, are not signals for the convenience of its employees, and if used as such and thereby the public is unnecessarily disturbed, they constitute a legal nuisance. *Presbrey v. Railway Co.,* 103 Mass. 1; *Williams v. N. Y. Cent. Ry. Co.,* 16 N. Y. 97. What may be unobjectionable in a legal sense, in one locality may be a legal nuisance in another. *First Baptist Church v. Utica & S. R. Co.,* 6 Barb. 373; *Rodenbransen v. Craven,* 141 Pa. 546. The weight of authority in the United States is that, to constitute a nuisance, the acts must be such as to materially interfere with the comfort of an ordinary, reasonable person in the vicinity, *Sparhawk v. Railway Co.,* 54 Pa. 401; *Westcott v. Middleton,* 43 N. J. Eq. 478; and not merely to incommode a sick person. *Rogers v. Elliott,* 146 Mass. 349; *Fay v. Whitman,* 100 Mass. 76. And it is no defense that all the other persons in that locality are injured in the same way. *Wesson v. Washburn Iron Co.,* 13 Allen, 95.

RELIGIOUS SOCIETIES—TITLE TO PROPERTY—MATERIALITY.—LEE V. METHODIST EPISCOPAL CHURCH IN V. S., 78 N. E. 646 (MASS.).—A grantor con-

veyed land to grantees by a deed in consideration of money paid by them as trustees, of an unincorporated church the words being "trustees, their heirs and assigns." *Held,* in a suit by new trustees against persons acting as new trustees, involving the right to the property that the intention of the grantor to vest the property in the grantees as trustees was immaterial; for, if the deed was to the grantees as trustees, the title to the property did not vest in others by force of their appointment as trustees.

The general rule is that a trustee cannot delegate his authority. *Bispham on Eq.,* p. 219. The election of new trustees by an incorporated society in conformity with the usages of their church, created no privity of estate between them and the trustees who took the land by the deed, and could have no effect in law to divest of the title, those grantees named in the deed or the survivor of them. *Peabody v. Eastern Methodist Society in Lynn,* 87 Mass. 540. But a conveyance to trustees for the use of a religious society without naming any of them vests the title in the corporation named in the deed. *Keith & P. Coal Co. v. Bingham,* 97 Mo. 196. It is even held that a conveyance to trustees for the use of a religious society, whether trustees are or are not named, executes a legal estate in the congregation itself not by way of charitable use, but in absolute ownership. *Brendle v. German Ref. Cong. of Jackson Township,* 33 Pa. 415.

RESULTING TRUST—PAYMENT OF PURCHASE MONEY—STATUTES.—FAGAN V. MCDONNELL, 100 N. Y. SUPP. 641. Where a purchaser paid the consideration for a conveyance and took title in the name of his niece, without her knowledge, and she subsequently, having learned of it, executed a deed, blank as to grantees, and gave it to the purchaser. *Held,* that although he and his devisees held the property for eighteen years and the niece never claimed the rents nor looked after it in any way, an action in ejectment would lie. Jenks, J., *dissenting.*

In the absence of statute it is a general rule in England and in the United States that where a purchaser pays the purchase money, but takes the title in the name of another, a trust will result, by presumption of law, in his favor. *Perry on Trusts,* Section 126; *Dyer v. Dyer,* 2 Cox. 92. A few states, however, including New York, declare by statute that no such trust will result unless the grantee takes as an absolute conveyance in his own name, and without the consent of the purchaser. *Real Prop. Laws of N. Y.* (1896) Section 74. Such statutes are analogous to the common law rule, that where there is a feoffment to another without a consideration, if the use was actually declared it would prevail. *1 Sander's Uses and Trusts,* 59; *Sugden's Gilbert Uses,* 89. These statutes, however, make an exception when there is a fraud, and a trust may be insisted upon. *Kennedy v. McCloskey,* 170 Pa. 354. *Rouchefoucaula v. Boustead,* 1 Ch. 206. Hence, in this case, a defrauded creditor would be allowed to enforce a resulting trust, so far as may be necessary for the satisfaction of his claim. *McCartney v. Bostwick,* 32 N. Y. 53; *1 Stimson's Am. St. Law,* Section 1706. Or if the grantor did not consent to it, *Haack v. Weicker,* 118 N. Y. 67; *Lloyd v. Woods,* 176 Pa. 63. However, a resulting trust will not arise against the positive provision of a statute, nor in contravention of public policy. *Bispham on Equity,* (7th ed.) Section 82; *Hill on Trustees,* p. 93, 94. And parol evidence is admissible both to create and rebut such resulting trusts. *Swinburne v. Swinburne,* 28 N. Y. 568; *Blodgett v. Hildreth,* 103 Mass. 487.